

PENNSYLVANIA UTILITY LAW PROJECT

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October 3, 2012

VIA ELECTRONIC FILING (E-FILING)

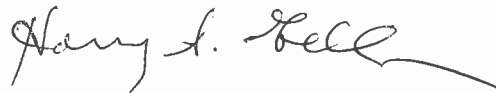
Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Pa. PUC v. PPL Electric Utilities Corporation
Docket No. M-2012-2264635**

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned proceeding, please find the comments of the Pennsylvania Utility Law Project. These comments are submitted pursuant to the Commission Opinion and Order in this proceeding entered September 13, 2012..

Very truly yours,



Harry S. Geller.

Enclosures
cc: Certificate of Service

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

**Pennsylvania PUC v.
PPL Electric Utilities Corporation**

Docket No. M-2012-2264635

CERTIFICATE OF SERVICE

I hereby certify that I have today served a true copy of the foregoing Comments upon the parties of record in this proceeding listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated October 3, 2012

BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

**Pa. Public Utility Commission, Bureau of
Investigation and Enforcement v. PPL
Electric Utilities Corporation**

Docket No. M-2012-2264635

COMMENTS OF THE
PENNSYLVANIA UTILITY LAW PROJECT

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Dated: October 3, 2012

I. INTRODUCTION

The Pennsylvania Utility Law Project (“PULP”) respectfully submits these comments regarding the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) Settlement Agreement between PPL Electric Utilities Corporation (“PPL”) and the Commission’s Bureau of Investigation and Enforcement (“I & E” or “Prosecutory Staff”).¹

PULP, part of the Pennsylvania Legal Aid Network, a nonprofit network of legal services representing the interests of low income Pennsylvanians, is the specialized project providing statewide representation, advice, and support in energy and utility matters on behalf of low income, residential utility customers. PULP thanks the Commission for the opportunity to submit these comments pursuant to the Opinion and Order entered on September 13, 2012.

II. BACKGROUND

This settlement involved the death of Mr. Richard Eberly, a 45 year old who resided at 200 West Burkholder Drive, Lot 9, Lititz, Pennsylvania. On May 24, 2011, electric service to Mr. Eberly, a PPL customer, was terminated. PPL was informed of Mr. Eberly’s death on August 2, 2011. At the request of the Commission’s Bureau of Consumer Services (“BCS”), I & E initiated an informal investigation on August 4, 2011, based upon notification by PPL of the death of its former customer. This notification by PPL was pursuant to the January 16, 2009 Secretarial Letter regarding the *Interim Reporting Requirements for Regulated Electric and Gas Utilities to File Reports Regarding any Incidents Involving Death at Locations Where Residential Utility Service Has Been Terminated* at Docket No. M-2009-2084013.²

¹ *Pa. Public Utility Commission Bureau of Investigation and Enforcement v. PPL Electric Utilities Corporation*, Docket No. M-2012-2264635 (Order entered September 13, 2012).

² These reporting requirements were incorporated in the final regulations concerning Chapter 56 at 52 Pa. Code § 56.100(j).

I & E alleged PPL may have violated Chapter 14 and Chapter 56 provisions of the Code during contacts with the customer concerning dispute rights and termination of electric service. In addition, I & E alleged that PPL violated Section 1501 of the Code regarding the failure to provide adequate, efficient, safe, and reasonable service. More specifically:

Had this matter been litigated, I&E would have alleged, *inter alia*, that PPL failed to: (1) exercise good faith and fair judgment in attempting to equitably resolve the matter; (2) restore service within twenty-four hours of the erroneous termination; (3) determine whether the customer was satisfied at the conclusion of contacts made with customer service representatives (CSRs); (4) fully investigate the customer's dispute or initiate utility company dispute procedures; and (5) provide the customer with the information necessary for making an informed decision.³

Prosecutory Staff and counsel for PPL conducted settlement negotiations that resulted in the Settlement Agreement filed on April 23, 2012.⁴ The Settlement Agreement requires PPL to pay a \$30,000 civil penalty, make a \$15,000 contribution to Operation HELP, and address staff training, call monitoring, and reporting requirements.⁵ The Commission opened the Settlement Agreement up to public comment.

III. COMMENTS

PULP respectfully submits that past settlements with PPL have not proven to be adequate to modify company customer service behavior, achieve compliance with commission regulations nor to deter continued violations. As evidenced by these prior settlements, some of which are highlighted below, terms similar to those agreed to in this instance have apparently not

³ *Pa. Public Utility Commission Bureau of Investigation and Enforcement v. PPL Electric Utilities Corporation*, Docket No. M-2012-2264635 (Order entered September 13, 2012)(citing Settlement ¶ 25, at 11-14).

⁴ *Pa. Public Utility Commission Bureau of Investigation and Enforcement v. PPL Electric Utilities Corporation*, Docket No. M-2012-2264635 (Settlement Agreement filed April 23, 2012)(hereinafter "Settlement Agreement") at para. 9.

⁵ *Id.* at para. 33.

sufficiently deterred further violations of the Code and the Commission's regulations nor resulted in long-term customer service compliance modifications. PULP encourages the Commission to either reject the current settlement as not being in the public interest or to modify the settlement terms and penalties so that the quality of service and the protection customers receive is enhanced; that the settlement deters future noncompliance; and that PPL is sufficiently incentivized to ensure that behavioral modification of its customer service procedures will occur.

The Commission has clear legal authority to modify the terms of a settlement agreement. The general powers granted in Title 66, Chapter 5 and the specific charge contained in Title 66, Chapter 15 to ensure public utilities provide safe and reasonable service combine to provide authority to the Commission to review and approve settlement agreements, both formally and informally.⁶ These general powers are made explicit in Title 52, Chapters 3 and 5 of the Pennsylvania Code, wherein the Commission expressly reserves the right to review settlement agreements.⁷

The adequacy of the settlement terms must be assessed with an awareness of previous settlements and their efficacy. Section 69.1021(a) of the Commission's Policy Statement directs the Commission to use standards to determine "if a fine for violating a commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest." In evaluating the reasonableness of the settlement and whether it is in the public interest, it is helpful to review some past settlements with PPL.

⁶ 66 Pa.C.S. §§ 501, 504-506, and 1501.

⁷ 52 Pa. Code §§ 3.113 and 5.232.

In 2005, the Prosecutory Staff initiated an informal investigation into PPL's termination practices.⁸ Allegations included the following:

- Violation of the winter termination provisions of Chapter 14 of the Code by terminated customers without income information
- Failing to deliver a 48-hour shut off notice to 8 customers
- Failing to reconnect service of 36 customers within 24 hours of their claim that their income was at or below 250 percent of the federal poverty level
- Assessing a \$15 reconnection fee to low-income customers

In 2006, the Commission approved a settlement containing the following provisions:

- An updated winter service termination plan to be reviewed with the Bureau of Consumer Services
- An evaluation and revision of current training material for CSRs
- A revision of it's 3-day script for winter service termination
- \$175,000 for Operation HELP

The informal investigation was precipitated by PPL's termination of service to 540 residential customers in March 2005. PPL's account records either had no income information for the customer or the records indicated that the customer's income was at or above 300% of the federal poverty level. Post-termination, 114 customers contacted PPL and asserted that they were low-income and the company then reconnected service to all of those customers.

In *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation* at Docket No. M-2009-2058182 ("Settlement Agreement-Lancaster"), a

⁸ *Law Bureau Prosecutory Staff Informal Investigation of the PPL Electric Utilities Corporation Residential Service Terminations*, Docket No. M-00061942 (Order entered August 21, 2006).

customer's service was terminated as a result of a delayed posting of payment that erroneously indicated that the customer's account was in default.⁹ Post-termination, a conversation between the customer and CSR involved no discussion of dispute rights information. One day after termination, a fire broke out at the residence resulting in the death of the resident. If litigated, the Prosecutory Staff would have alleged that PPL:

- Erroneously notified the customer of impending termination
- Erroneously terminated the customer's service
- Unreasonably terminated the customer's service in nonconformance with regulations and orders of the Commission
- Failed to provide dispute rights
- Divulged confidential information to an unauthorized third party; and
- Failed to explain and provide all service restoration requirements¹⁰

Under the settlement, the company agreed to:

- Refrain from terminating service to residential customers on Fridays before Jan. 1, 2013, without petitioning to the PUC
- Contribute \$400,000 to Operation HELP
- Pay a civil penalty of \$50,000
- Establish additional customer service procedures; and
- Revise internal procedures to deal with terminations, medical certificates, and disputes

⁹ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2009-2058182 (Order entered November 23, 2009).

¹⁰ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-20092058182 (Joint Petition for Settlement Agreement dated July 2, 2009) at para 16.

In addition to the Settlement Agreement–Lancaster, the settlement agreement in *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation* at Docket No. M-2009-2059414, (“Settlement Agreement-Mechanicsburg”) provides even stronger support as to why many of the terms of the current Settlement Agreement do not sufficiently promote the public interest. Post-termination, a fire broke out and destroyed six homes. The Settlement Agreement–Mechanicsburg case involved allegations that PPL:

- Failed to adequately explain all methods of avoiding termination of service
- Failed to properly explain the medical certification process prior to termination of service
- Failed to explain dispute rights
- Unreasonably discontinued the customer’s electric service without complying with the Commission’s regulations and orders

Pursuant to the Settlement Agreement-Mechanicsburg, PPL agreed to:

- Develop updated call scripts for CSRs and provide retraining
- Revise procedures for CSRs receiving calls on termination
- Provide refresher training on the medical certification process
- Contribute \$20,000 to Operation HELP; and
- Pay a \$1,000 civil penalty ¹¹

Another settlement agreement in *Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation* at Docket No. M-2011-2196342, (“Settlement Agreement-Quarryville”), contained yet additional allegations of PPL’s inadequate explanation

¹¹ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2009-2059414 (Order entered November 23, 2009) at 5.

of dispute rights.¹² The residential customer passed away approximately two weeks after his service was terminated. The settlement terms which required that PPL adequately train its CSRs on customer dispute rights, were similar to both the Settlement Agreement-Lancaster and the Settlement Agreement-Mechanicsburg. The Settlement Agreement-Quarryville directed PPL to contribute \$10,000 to Operation HELP and pay a \$5,000 civil penalty.¹³

PULP respectfully submits that to adequately promote the public interest, in evaluating the current Settlement Agreement the Commission should view its terms in light of the repeated allegations of similar violations in the past and modify the terms to provide a stronger, more effective deterrent. The requirement that PPL adequately train its CSRs on customer dispute rights is appropriate, but there have been similar commitments made by PPL pursuant to the Settlement Agreement-Lancaster, Settlement Agreement-Mechanicsburg, and Settlement Agreement-Quarryville. The fact that this provision was a part of three recent settlement agreements, yet still persists, is indicative of a continuing customer service deficiency that has not been adequately addressed by PPL.

The alleged violations in this case are significant enough to require substantive deterrents. By allegedly failing to properly and consistently provide Mr. Eberly with information regarding dispute procedures, PPL essentially stripped him of a significant number of his consumer protections. The Settlement Agreement calls for a \$30,000 civil sanction and \$15,000 contribution to Operation HELP. Non-financial settlement terms include additional training for CSRs on customer disputes, the provision of call monitoring initiatives, Commission visits to the call centers for the purpose of directly monitoring incoming calls, and a series of situational

¹² *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2011-2196342 (Settlement Agreement dated May 20, 2011).

¹³ *Id.*

workshops to discuss customer disputes.¹⁴ At a minimum, these measures are called for. However, considering the previous settlements discussed above, they appear to be inadequate to serve as an effective deterrent of future violations.

While the current Settlement Agreement is slightly different in that it provides for Commission staff on-site visits to call centers for the monitoring of incoming calls, some other settlement terms that address training and system changes are duplicative of previous settlement terms in similar cases before the PUC. For example, Settlement Agreement-Quarryville already noted PPL's use of situational workshops and required that PPL provide call monitoring reports to the Commission and targeted training to CSRs.¹⁵ Although the requirement for Commission visits to call centers is new, it alone does not appear to be sufficient to cause a long-term modification of lax procedures and deter PPL's repetitive conduct.

PULP recommends that the Commission reject or modify the Settlement Agreement so an agreement can be constructed that is in the public interest. Past allegations of PPL's failure to provide dispute rights as well as the allegations made in this current settlement, indicate the need for additional corrective measures, longer monitoring of operations, and heightened penalties and contributions in order to adequately prevent future incidents.

A. Standards in Evaluating the Settlement Agreement

The Pennsylvania Code contains the standards and factors by which the Commission must judge whether a settlement is reasonable and in the public interest.¹⁶ The parties in settlement cases are afforded more flexibility in reaching amicable resolutions as long as the

¹⁴ Settlement Agreement at para. 33.

¹⁵ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2011-2196342 (Settlement Agreement dated May 20, 2011) at para. 31.

¹⁶ 52 Pa. Code § 69.1201.

settlement is in the public interest.¹⁷ In this instance, each standard must be evaluated not only based on the circumstances of these alleged violations, but based on whether similar terms in previous settlements have achieved the desired result.

First, a factor is whether the conduct at issue is of a serious nature.¹⁸ The Prosecutory Staff has stated that the Commission deems any termination of essential utility service to be a serious concern.¹⁹ In each case discussed in these comments, PPL failed to provide customers with information that could have been utilized to prevent termination.

The second factor to consider is whether the resulting consequences of the conduct are of a serious nature.²⁰ As noted above, the Commission has established that termination of electric service to a residential customer is deemed to be a serious event.²¹

The third standard pertains to litigated cases only.²²

The fourth standard is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. Modifications may include changes in training or improving company techniques and supervision.²³ PULP requests that since previous efforts to modify internal practices have not proven to be successful in preventing similar conduct, that the fourth standard now requires stronger enforcement.

¹⁷ 52 Pa. Code § 69.1201(b).

¹⁸ 52 Pa. Code § 69.1201(c)(1).

¹⁹ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2011-2196342 (Law Bureau Prosecutory Staff Statement in Support of Settlement Agreement dated May 20, 2011) at para. 7)(Hereafter “LBPS Statement”).

²⁰ 52 Pa. Code § 69.1201(c)(2).

²¹ LBPS Statement at para. 8.

²² 52 Pa. Code § 69.1201(c)(3).

²³ 52 Pa. Code § 69.1201(c)(4).

Another standard is the number of customers affected and the duration of the violation.²⁴ While it is not feasible to determine the number of customers other than Mr. Eberly who were affected by PPL's conduct, the alleged conduct may be a systematic problem that affects a large number of customers.

The sixth factor to consider is the compliance history of the regulated entity which committed the violation. "An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty."²⁵ The Commission may also consider whether the regulated entity cooperated with its' investigation. While the Prosecutory Staff acknowledged that PPL was fully cooperative with the investigation, the Commission should consider that these are recurring violations with serious consequences.²⁶

The Commission should also consider the amount of the civil penalty or fine necessary to deter future violations.²⁷ As discussed above, the terms of the Settlement Agreement provide that PPL pay a \$30,000 civil penalty and make a \$15,000 contribution to Operation HELP. An examination of prior settlements indicates that more robust and sanctions must be included in the Settlement Agreement to incentivize PPL to modify its customer representative practices.

Lastly, the Commission is asked to consider other relevant factors.²⁸

Taking in to account the various factors, it is clear that it is reasonable and in the public interest that a new approach be used to encourage PPL's compliance with Commission

²⁴ 52 Pa. Code § 69.1201(c)(5).

²⁵ 52 Pa. Code § 69.1201(c)(6) and (c)(7).

²⁶ Settlement Agreement at para. 28.

²⁷ 52 Pa. Code § 69.1201(c)(8) and (c)(9).

²⁸ 52 Pa. Code § 69.1201(c)(10).

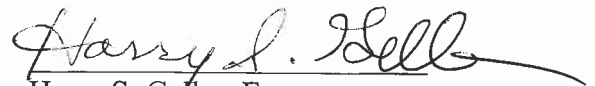
regulations. Additional, not duplicative, measures must be incorporated into the Settlement Agreement.

PULP recommends that one of the additional approaches which the Commission should consider is to require a significant contribution of \$100,000 or more by the company to the expansion of its Low Income Usage Reduction Program (“LIURP”) known as WRAP. A significant and robust contribution, paid by shareholder, not ratepayer, dollars will be noticed and would most likely provide additional incentives for service quality improvement. A contribution to LIURP would serve the public purpose of reducing electric usage; assist low-income customers and reduce costs of other ratepayers who pay the costs of other customer assistance programs.

IV. CONCLUSION

The Commission should exercise its authority to modify or reject this Settlement Agreement. As demonstrated by recent settlements, requiring duplicative terms will not sufficiently deter PPL from improperly handling customer disputes and terminations. Therefore, heightened financial penalties and stricter requirements for internal company procedures should be imposed.

Respectfully submitted,



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